

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 689

(Delegate Rosenberg, *et al.*)

Judiciary

Judicial Proceedings

CINA, Guardianship, Adoption, Custody, and Visitation - Disability of Parent,
Guardian, Custodian, or Party

This bill limits the relevance of a disability of a parent, guardian, custodian, or party in certain Child In Need of Assistance (CINA) custody, and visitation proceedings. In addition, the bill prohibits (1) local departments of social services (LDSS), guardians, or child placement agencies from withholding consent to adoption; (2) the court from denying an adoption petition solely because of a disability; and (3) a child from being committed to the custody or guardianship of a LDSS and the LDSS from seeking custody of a child solely because the child's parent or guardian has a disability.

Fiscal Summary

State Effect: None. The bill's requirements can be handled with existing budgeted resources.

Local Effect: None. The bill's requirements can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: "Disability" is defined as (1) a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; (2) a mental impairment or deficiency; (3) a record of having a physical or mental impairment as otherwise defined under the bill; or (4) being regarded as having a physical or mental impairment as otherwise defined under the bill. "Disability" includes (1) any degree of paralysis or amputation; (2) blindness or visual

impairment; (3) deafness or hearing impairment; (4) muteness or speech impediment; (5) physical reliance on a service animal, wheelchair, or other remedial appliance or device; and (6) intellectual disability and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.

In making a disposition on a CINA petition, a disability of the child's parent, guardian, or custodian is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the ability of the parent, guardian, or custodian to give proper care and attention to the child and the child's needs.

In determining whether to grant custody and guardianship of a CINA to a relative or nonrelative, a disability of the relative or nonrelative is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

A LDSS, guardian, or child placement agency may not withhold consent for an adoption solely because a prospective adoptive parent has a disability. A court may not deny a petition for an independent adoption solely because the petitioner has a disability.

A child may not be committed to the custody or guardianship of a LDSS and placed in an out-of-home placement solely because the child's parent or guardian has a disability. The Social Services Administration (SSA) must adopt regulations that prohibit a LDSS from seeking the custody or guardianship of a child for placement in foster care solely because the child's parent or guardian has a disability.

In any custody or visitation proceeding, a disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

Current Law: A CINA is a child who requires court intervention because the child was abused or neglected or has a developmental disability or a mental disorder, and the child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

Unless good cause is shown, a court must give priority to the child's relatives over nonrelatives when committing the child to the custody of an individual other than a parent. In determining whether to grant custody and guardianship to a relative or nonrelative, the court may not consider a disability of the relative or nonrelative unless the court finds that the disability causes a condition that is detrimental to the best interests of the child.

A LDSS, guardian, or child placement agency may not withhold consent for an adoption solely because the race, religion, color, or national origin of the prospective adoptive parent differs from the child's. In ruling on an adoption petition, the court may not deny the petition solely because the petitioner is single or unmarried.

A child may not be committed to the custody or guardianship of a LDSS and placed in an out-of-home placement because the child's parent or guardian lacks shelter or solely because the child's parents are financially unable to provide treatment or care for a child with a developmental disability or mental illness. SSA must adopt regulations to prohibit a LDSS from seeking custody or guardianship of a child for placement in foster care solely because the child's parent or guardian lacks shelter or solely because the child's parents are financially unable to provide treatment or care for a child with a developmental disability or mental illness.

Maryland courts resolve custody disputes based on a determination of "what is in the child's best interests." *Taylor v. Taylor*, 306 Md. 290, 500 A.2d 964 (1986). In a custody dispute between the child's parents, the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments. The criteria for judicial determination include, but are not limited to, the fitness of the parents. See: *Montgomery County v. Sanders*, 38 Md. Ap. 406 (1977).

Additional Information

Prior Introductions: None.

Cross File: SB 613 (Senator Gladden, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of Courts), Department of Legislative Services

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